

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DEVIN COLE,  
Plaintiff,

v.

SIERRA PACIFIC MORTGAGE  
COMPANY, INC.,  
Defendant.

Case No. [18-cv-01692-JCS](#)

**ORDER DENYING WITHOUT  
PREJUDICE MOTION TO STRIKE  
AFFIRMATIVE DEFENSES**

Re: Dkt. No. 26

Plaintiff Devin Cole moves to strike several affirmative defenses from the answer filed by Defendant Sierra Pacific Mortgage Company (“Sierra Pacific”). At least some of the affirmative defenses at issue appear to relate to issues that will likely be litigated either for class certification or for the merits of Cole’s TCPA claim, while others appears unlikely to have any effect on the case. “‘The function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial . . . .’” *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010) (ellipsis in original; citation omitted). Based on the present record, Cole’s motion is more likely to cause than avoid unnecessary litigation and expense.

In the interest of efficiency, Sierra Pacific need not file a response, the hearing set for December 7, 2018 is VACATED, and the motion is DENIED without prejudice.<sup>1</sup> *See Hernandez v. Balakian*, No. CV-F-06-1383 OWW/DLB, 2007 WL 1649911, at \*3 (E.D. Cal. June 1, 2007) (denying a motion to strike affirmative defenses that appeared to be “an ‘unnecessary formalism’ wasting the time and resources of the parties and the Court”).

If Cole remains concerned that Sierra Pacific has asserted improper defenses, the parties

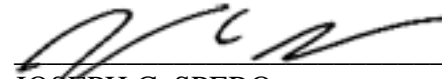
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<sup>1</sup> The parties have consented to the jurisdiction of the undersigned magistrate judge for all purposes pursuant to 28 U.S.C. § 636(c).

1 shall meet and confer regarding whether an agreement can be reached for Sierra Pacific to amend  
2 its answer. If the parties cannot resolve the issue, Cole may file a renewed, narrowly tailored  
3 motion articulating the prejudice that he faces from any improper defense he seeks to strike.

4 **IT IS SO ORDERED.**

5 Dated: November 1, 2018

  
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JOSEPH C. SPERO  
Chief Magistrate Judge